

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 11

House of Raeford Farms, Inc.
Employer¹

and

Case 11-RC-6740

United Food & Commercial Workers International Union, Local 204
Petitioner²

REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION

The Employer, House of Raeford Farms, Inc., is engaged in the processing and sale of chicken and turkey products at its facility located in Raeford, North Carolina. The Petitioner, United Food and Commercial Workers International Union, Local 204, has represented the production employees at this facility for at least 17 years. It filed this petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a stand-alone bargaining unit consisting of all shipping and freezer department employees at the Employer's Raeford facility.³ At hearing, Petitioner also stated that it was willing either to proceed to a self-determination election under the *Armour-Globe* doctrine, or to seek to represent a residual unit encompassing some, but not all, of the currently unrepresented classifications.

¹ The Employer's name appears as amended at hearing.

² The Petitioner's name appears as amended at hearing.

³ The parties agree that the shipping department and the freezer department are synonymous.

In contrast, the Employer asserts as a threshold matter that there is a contract bar to the petition, as the shipping/freezer department employees are excluded by contract from the current unit. The Employer also argues that the petitioned-for unit is inappropriate, and that the only appropriate unit is a larger residual unit comprised of all of the Employer's unrepresented employees. In that regard, the Employer further contends that the Petitioner is foreclosed from litigating the appropriateness of a unit that is substantially different from that which was petitioned for.

Following a hearing before a hearing officer, the parties filed briefs with me. I have considered the evidence adduced during the hearing and the arguments advanced by the parties on the issues. As discussed fully below, I have decided to direct an election of only certain employees in the shipping/freezer department which the Petitioner seeks to represent through its petition.

To provide a context for my discussion of the issues and my conclusions, I will first provide an overview of the Employer's operations. Next, I will address the Employer's contract-bar arguments. Finally, I set forth my findings and conclusions concerning the appropriateness of directing an election for employees in the shipping/freezer department as a stand-alone bargaining unit.

I. OVERVIEW

The Employer's Raeford operations encompass several buildings situated over a large geographic area. Two large plants house the primary production operation: Plant 1, which is also called the Old Plant, contains the slaughter operation, and Plant 2, which is also called the New Plant or Further Processing Facility, contains the processing operation, where the meat is processed into various prepared food products. There is a

shipping/freezer department located within each plant. In addition to its processing plants, the Employer's operations also include a number of additional buildings, including a print shop, retail store, fabrication shop, and laboratory.

As mentioned above, the Petitioner has represented the approximately 1,250 production employees at the Employer's Raeford facility for many years. The effective dates of the current collective bargaining agreement are May 18, 2008, to May 18, 2011. As set out in the recognition clause of that agreement, the currently-represented employees work in the following departments in Plants 1 and 2: hanging, killing, picking, eviscerating, chilling, cutup, packing, further processing downstairs, further processing upstairs, further processing new plant, clean up, and slicing department. The Employer asserts that there are approximately 227 employees at the same location of the Employer who are not represented by the Petitioner or any other labor organization, including the 61 employees in the shipping/freezer department. Employees in the shipping/freezer department have never been included in the bargaining unit.

The overall production process is as follows: Live turkeys and chickens are brought to Plant 1, where they are killed, cleaned, cut up or left whole, and chilled. A portion of the product is then packaged at Plant 1, after which it moves to the shipping/freezer department in Plant 1 for shipment to customers. The remaining cut up product is transported on trucks driven by two interplant drivers to Plant 2, where it is processed into prepared food products, in accordance with various recipes. The prepared food products then move to the shipping/freezer department in Plant 2, where they are stored in freezers and then loaded and transported to customers on trucks driven by the

Employer's four Commercial Drivers' License (CDL) drivers. Neither group of truck drivers is included in the current bargaining unit.

The Petitioner seeks to represent shipping/freezer department employees in the job classifications of checkers, helpers, loaders, jack drivers, and lift drivers. There are approximately 61 employees in these classifications in both plants. It does not seek to represent plant clerical employees in the shipping/freezer department, of whom there are 9 at both plants. No other labor organization seeks to represent the Employer's non-represented employees in a broader unit.

II. THE CONTRACT BAR ISSUE

At hearing and in its brief, the Employer argued that the subject petition should be dismissed because it is barred by the contract now existing between the parties. Relying on *Briggs Indiana Corp.*, 63 NLRB 1270 (1945), the Employer maintains that a petition by a union which currently represents some of the workers of an employer should be dismissed when the union has agreed that it does not represent other workers of the employer. In support of its position, the Employer points to the current collective bargaining agreement between the parties, which has a recognition clause that excludes "...all warehousing and distribution center employees, maintenance, truck drivers, quality control, retail store employees, office clerical, guards, and supervisors as defined by the National Labor Relations Act."

A review of the current contract, however, shows that the agreement does not contain a provision in which the Petitioner explicitly agrees not to seek to represent any employees who are excluded from the bargaining unit that it currently represents. Further, the Employer introduced no evidence that the Petitioner ever requested

recognition of the shipping/freezer department employees in the course of the bargaining that resulted in the current contract.

Citing *Women & Infants' Hospital of Rhode Island*, 333 NLRB 479 (2001), the Board in *UMass Memorial Medical Center*, 349 NLRB 369, 370 (2007) squarely answered the contract bar contention of the Employer by stating:

Subsequently, in *Cessna Aircraft Co.*, 123 NLRB 855, 856 (1959), the Board established that the *Briggs Indiana* rule applies “only where the contract itself contains an *express* promise on the part of the union to refrain from seeking representation of the employees in question or to refrain from accepting them into membership.” Thus, a promise not to seek to represent a particular group of employees may not be implied by way of an explicit exclusion from a contractual unit or on the basis of an “alleged understanding” between the parties during their negotiations. *Cessna Aircraft*, supra at 856 (emphasis in original).

Consequently, for the reasons stated by the Board in *UMass Memorial Medical Center, Id.*, I reject the assertion of the Employer that the petition should be dismissed because of the contract bar doctrine of the Board.

III. THE APPROPRIATE BARGAINING UNIT ISSUE

A. APPLICABLE LEGAL STANDARD

The Board’s procedure for determining an appropriate unit under Section 9(b) is to begin by examining the petitioned-for unit. If that unit is found to be appropriate, then the inquiry ends. However, if the petitioned-for unit is not appropriate, the Board may then examine the alternative units suggested by the parties. Additionally, the Board also has the discretion to select an appropriate unit that is different from what the parties

contend is appropriate. *See e.g. Overnite Transportation Co.*, 331 NLRB 662, 663 (2000).

In determining an appropriate unit, the Board finds that the unit need only be *an* appropriate unit, not the *most* appropriate unit, so that employees are given “the fullest freedom in exercising the rights guaranteed by the Act.” *Bartlett Collins Co.*, 334 NLRB 484 (2001); *Overnite Transportation*, 322 NLRB 723 (1996). With that in mind, the petitioner’s desire concerning the unit is a relevant consideration, but it is not dispositive. *Mark’s Oxygen Co.* 147 NLRB 228, 230 (1964). The Board “generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employees.” *Bartlett Collings Co., supra*.

The Board applies a community-of-interest standard when deciding an appropriate unit. Under this analysis, the Board considers such factors as past bargaining history; community of interest in wages, hours and other working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration. *Bartlett Collins, supra*, citing *Ore-Ida Foods*, 313 NLRB 1016 (1994); *Washington Palm, Inc.*, 314 NLRB 1122, 1126-1127 (1994).

The Employer argues that the unit sought in the petition is not a presumptively appropriate unit. More specifically, the Employer asserts that because the Petitioner only seeks to represent certain employees in the shipping/freezer department and not a larger residual unit of all of the Employer’s remaining unrepresented employees, the petitioned-

for unit is not appropriate.⁴ In that vein, the Employer further contends that since such a residual unit is substantially different from the petitioned-for unit, the Petitioner's failure to amend its petition compels the conclusion that the petition must be dismissed as a procedural matter. As fully discussed below, in finding no merit to the Employer's arguments, I have examined each community-of-interest criterion, and I conclude that the employees in the petitioned-for unit share a distinct and separate community of interest apart from the represented production employees. Accordingly, I conclude that a separate bargaining unit of shipping/freezer department employees is appropriate. In so finding, I further conclude, contrary to the Employer, that the clericals in the shipping/freezer department do not have such a strong community of interest with the other shipping/freezer department employees that they must be included in the appropriate unit found herein, and I shall, therefore, exclude them.

B. COMMUNITY-OF-INTEREST CRITERIA

1. THE DEGREE OF FUNCTIONAL INTEGRATION

As with nearly all production operations, each department of the Employer contributes in some measure to the creation and delivery of the end product to its customers. Thus, there is a measure of functional integration throughout the Employer's operation. Despite this circumstance, however, the shipping/freezer department is unique when compared to the other departments of the Employer. First, the shipping/freezer department employees are isolated and set apart from all other employees, including both

⁴ In addition to the 61 shipping/freezer department employees in the petitioned-for unit, the record establishes that the employees in the following categories and/or locations are unrepresented: nurse, truck drivers, clericals, sales, print shop, supply, cafeteria, retail store, maintenance (including maintenance support and supply), fab shop, refrigeration, sales, information technology, waste water, purchasing, laboratory, quality control/quality assurance, and research and development. The parties stipulated that security guards would be excluded from the bargaining unit.

the represented production employees and other nonrepresented non-production employees, based on two factors. As an initial matter, and as the Employer acknowledges in its brief, the most obvious distinction for shipping/freezer department employees is their virtual isolation from the rest of the processing operation. That is, due to food safety and product contamination concerns, these employees are forbidden from coming into contact with other employees of the Employer. Indeed, the record describes in detail the structures such as separate entrances, work areas, break rooms, locker rooms, and restrooms, that are in place to insure that the employees sought in the petition remain segregated from all other employees of the Employer. Consequently, the approximately 61 shipping/freezer department employees, because of their total isolation from other employees, function as a distinct and homogenous group with virtually no contact during the work day with other employees from outside of their department.

A second significant element that distinguishes the shipping/freezer department employees from all other employees is their daily work environment. While other employees work in normal temperatures, and production employees generally work in temperatures above 40 degrees Fahrenheit shipping/freezer department employees constantly work in much lower temperatures, often 5 degrees below zero Fahrenheit. For this reason, the shipping/freezer department employees, unlike other employees of the Employer, wear special freezer suits including hats and gloves in their segregated work areas.

2. COMMON SUPERVISION

The record establishes that there is no substantial common supervision between the shipping/freezer department and the rest of the Employer's operation. In that regard,

the shipping/freezer department is headed by the shipping manager who reports directly to the plant manager. The plant manager is the sole common supervisor between shipping/freezer department employees and all other employees. Subordinate to the shipping manager are several supervisors who direct the daily work of only the employees assigned to the shipping/freezer department. As would be expected, the shipping/freezer department supervisors are not responsible for employees from other areas of the two plants of the Employer; and they have very limited contact with persons outside of their department. For example, if a shipping/freezer department supervisor has to leave his department, Good Manufacturing Practices (GMP) and sanitation requirements dictate that the supervisor change his smock upon leaving and before returning to the restricted confines of the shipping/freezer department.

3. NATURE OF EMPLOYEE SKILLS AND JOB FUNCTIONS

The record reflects, and the Employer concedes in its brief, that the production employees and the shipping/freezer department employees perform totally different tasks. The shipping/freezer department employees, while working in sub-zero temperatures, operate jacks and lifts, stack frozen product, prepare loads for shipping and load truck trailers. As well, all employees in this department, and no other employees, are trained in the use of a scan gun, which is used to check all product, as it is being loaded. Moreover, employees in the shipping/freezer department only handle product after it has been packaged.

In contrast, the production employees, unlike the shipping/freezer department employees, primarily perform work on the meat product of the Employer while it is raw and unpackaged. The production employees are responsible for receiving the raw meat at

Plant 1 and processing it into a final product. At Plant 1, live turkeys and chickens are received, slaughtered, cleaned and then either cut into parts or left whole before being chilled. A designated amount of this product is packaged at Plant 1 and then transported to the segregated shipping/freezer department of Plant 1. The portion of the product not shipped from Plant 1 is taken to Plant 2 where production employees in accordance with various customer recipes cook and package it for reheating. Once the production process is completed and the product is packaged at Plant 2, it is taken to the shipping/freezer department of Plant 2 where it is stored in freezers before being loaded and sent to customers.

4. WORK SITUS

The shipping/freezer department employees at both Plant 1 and Plant 2 work in walled-off areas of these respective plants in complete isolation from any other employees. Though they do work within the same plant perimeters as production employees, due to the strict enforcement of sanitation regulations, shipping/freezer department employees' two sub-zero work areas are tantamount to being geographically segregated from the work situs of production employees engaged in slaughtering fowl or cutting, cooking or packaging meat. Additionally, as the Employer notes, production employees are required to remain at work on a production line, while shipping/freezer department employees move about within the designated area of their department.

5. INTERCHANGE AND CONTACT AMONG EMPLOYEES

Not only is there virtually no contact between shipping/freezer department employees and any other employees, including production employees, but the Employer employs physical boundaries to maintain this zero-contact rule. To this extent, at Plant 2

the shipping/freezer department employees have their own separate plant entrance from all other employees. Similarly, the shipping/freezer department employees have their own exclusive break room, locker room and restrooms at Plant 2 which they do not share with employees from any other department. Although the eleven shipping/freezer department employees at Plant 1 do share a break room with other employees, the record reflects that otherwise, the shipping/freezer employees at Plant 1 are similarly segregated like their counterparts at Plant 2.

In regard to interchange, open employee positions for the employees currently represented by the Petitioner in the bargaining unit are posted for bid by all employees of the Employer and awarded according to what appears from the record to be employer-wide seniority criteria. Therefore, it is possible for employees who are not in the production unit, including shipping/freezer department employees, to bid on and obtain positions in the production unit. However, although production employees are permitted to seek non-bargaining unit positions, those positions are not posted for bid and employee seniority rules are not followed in filling those job openings. While the record offers general testimony that employees have transferred from Plant 1 to Plant 2 and from inside the bargaining unit to outside the bargaining unit and vice-versa, there is no specific evidence of when or how many transfers occurred between the represented production employees and the shipping/freezer department.

6. GENERAL WORKING CONDITIONS

The record reflects that there are a number of differences with respect to the working conditions between production and shipping/freezer department employees. Thus, the first shift hours for both production and shipping/freezer department employees

are from 7:00 a.m. to 3:00 p.m. Due to the uncertainty of completing the loading of trucks, shipping/freezer department employees may work beyond 3:00 p.m.; but it is not common for production employees to work overtime. The second shift for shipping/freezer department employees begins at 3:00 p.m., and those employees in production who work on second shift report at 4:00 p.m.

With respect to clothing, shipping/freezer department employees wear special freezer suits. Of course, no production employee wears a freezer suit, but it is mandatory for all production employees to wear boots while working. Boots are optional for shipping/freezer department employees.

In regard to equipment, shipping/freezer department employees are the only employees of the Employer who are trained in the use of scan guns and who operate jacks and lifts which are used in the movement and stacking of packaged product.

There are also different restrictions imposed upon production employees and shipping/freezer department employees in regard to their movement during worktime and breaks. Thus, employees in the shipping/freezer department are permitted to leave the plant and go to their cars in the plant parking lot during breaks. In contrast, production employees are required to use break rooms inside the plant during their break times unless they take a smoke break on the exterior of the plant. During worktime, production employees are expected to maintain their production line positions, whereas shipping/freezer department employees move freely within their established departmental confines when performing their duties.

In regard to wages, all employees working in both the production areas and the shipping/freezer department of the two plants are paid on an hourly basis pursuant to a

similar, if not same, wage progression system. The evidence shows that, on average, these two groups of employees are equally paid. Finally, in regard to operations during the week of Christmas, the Employer shuts down and production employees do not work. However shipping/freezer department employees are expected to conduct inventory during that time frame.

7. FRINGE BENEFITS

All of the employees employed by the Employer receive identical fringe benefits.

C. SHIPPING/FREEZER DEPARTMENT EMPLOYEES CONSTITUTE AN APPROPRIATE BARGAINING UNIT

Contrary to the Employer's contentions, the shipping/freezer department employees in the petitioned-for unit do share a separate and distinct community of interest apart from the represented production unit employees. While shipping/freezer department employees do share a single plant manager with other employees, the Board has found that evidence concerning central administration is not a primary factor in determining whether a separate community of interest exists among a given group of employees. *Renzetti's Market, Inc.*, 238 NLRB 174, 175 (1978).

As discussed above, a number of factors demonstrate that the shipping/freezer department employees share a community of interest sufficiently distinct from the Employer's other employees to warrant their inclusion into a separate unit. First, the shipping/freezer department employees' total lack of contact with the Employer's other employees, including the represented production employees, is similar to a geographic separation, which may be persuasive in finding a separate unit to be appropriate. Cf. *A. Harris Co.*, 116 NLRB 1628, 1632 (1956) (warehouse employees not included in

storewide unit where warehousing operation geographically separated from retail store operation).

This unique separation from other employees due to sanitation regulations is not the only factor which sets the shipping/freezer department employees apart from the production employees and other unrepresented employees. Thus, the shipping/freezer department employees and the production employees, among other differences, do not share common duties, skills, training, supervision, work locations, work schedules, holiday time off, break times, freedom of movement during work and breaks, contact with the product, operation of equipment, overtime opportunities, plant entrances, break rooms, locker areas, restrooms, work attire and lunch periods.⁵

In addition, shipping/freezer department employees have a substantially different daily work environment compared to the represented production employees and all remaining employees. Thus, shipping/freezer department employees work in a contained area with temperatures below zero degrees Fahrenheit whereas production employees have fixed work stations on production lines in temperatures. Both production employees and unrepresented employees work in temperatures above 40 degrees. Consequently, I find that the shipping/freezer department employees are a sufficiently identifiable and homogenous segment of employees with functional distinctness and autonomy so as to constitute a separate appropriate bargaining unit. *Carl Buddig & Co.*, supra, 930. Therefore, in view of the absence of any bargaining history and the fact that no labor organization seeks to represent the Employer's employees in a broader unit, I find that the bargaining unit the Petitioner seeks to represent is an

⁵ I note that, in its brief, the Employer recognizes and fully agrees with the many distinctions between production employees and shipping/freezer department employees.

appropriate unit. *Purnell's Pride, Inc.*, 252 NLRB 110 (1980); *Bartlett Collins Co.*, *supra*.

As shown, I have concluded that the 61 shipping/freezer department employees in the job classifications of checkers, helpers, loaders, jack drivers and lift drivers whom the Petitioner desires to represent, constitute an appropriate unit. The Employer also asserts that the 9 clerical employees in the shipping/freezer department are required to be included in the unit. The Petitioner contends otherwise.

With respect to their work locations, five of these clerical employees work in Plant 1 and four of them work in Plant 2. These shipping/freezer department clericals work in offices in the two plants in proximity to the freezer areas where they handle export and administrative paperwork related to the shipment of product by the Employer. As they are not exposed to the sub-zero working conditions where the other shipping/freezer department employees work, they dress in regular office attire and not in the special freezer suits. The record does not reflect that they have any daily contact with the other employees in the shipping/freezer department who constantly remain isolated due to sanitation concerns. The only common factor that the shipping/freezer clericals appear to share with the other employees in that department is that in the Employer's supervisory hierarchy both groups of employees are under the ultimate control of the Shipping Manager.

In sum, the nine shipping/freezer department clericals do not share such a strong community of interest so as to require their inclusion in the petitioned-for unit. Thus, the different duties, work environments and skills of the shipping/freezer department clerical employees and their apparent total lack of contact with the other employees in the

shipping/freezer department does not reflect a highly integrated operation which mandates inclusion of these clericals with the other employees in the shipping/freezer department. The present case is readily distinguishable from cases such as *S & S Parts Distributors Warehouse*, 277 NLRB 1293 (1985) (clericals included in unit with warehouse employees), which found a community of interest among disputed classifications, based upon frequency of work contacts as well as other factors not present here. Therefore, I find the shipping/freezer department clericals should properly be excluded from a bargaining unit comprised of other shipping/freezer department employees. *Esco Corp.*, 298 NLRB 837, 841 (1990).

In asserting that the petitioned-for unit is inappropriate, the Employer argues that the unit sought in the petition is inappropriate because the Petitioner is not seeking a unit of all of the Employer's remaining unrepresented employees. As the Employer notes in its brief, the Board held in *Carl Buddig & Co.*, 328 NLRB 929, 930 (1999):

Where a portion of a workforce is already represented, the Board evaluates petitions to represent remaining employees first to determine whether the petitioned-for employees share a separate and distinct community of interest apart from the represented unit employees. If the community of interest of the petitioned-for employees is not separate and distinct such that they could not constitute an appropriate separate unit, the Board then determines whether they constitute an appropriate residual unit. A residual unit is appropriate if it includes "all unrepresented employees of the type covered by the petition." *Fleming Foods*, 313 NLRB 948, 949 (1994). See also *American Radiator & Standard Sanitary Corp.*, 114 NLRB 1151, 1154-1155 (1955).

Having determined, as discussed above, that the unit sought in the petition is a sufficiently distinct and homogenous group of employees which constitutes a separate stand-alone bargaining unit, I, therefore, find it unnecessary to address the matter of

whether a larger or residual unit might also be appropriate, or the Employer's related contention, that as a threshold matter, the Petitioner may not litigate the appropriateness of a substantially different bargaining unit.

IV. CONCLUSIONS AND FINDINGS

Based on the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time shipping/freezer department employees including checkers, helpers, loaders, jack drivers, and lift drivers employed by the Employer at its Raeford, North Carolina, Plant 1 and Plant 2 facility, but excluding all clerical employees, guards and supervisors as defined in the Act.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the United Food

& Commercial Workers International Union, Local 204. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to the Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with

them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before **September 17, 2010**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency website, www.nlr.gov,⁶ by mail, or by facsimile transmission at 336/631-5210. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

⁶To file the eligibility list electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Regional, Subregional and Resident Offices** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the eligibility list, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, www.nlr.gov.

Since the list will be made available to all parties to the election, please furnish a total of **three** copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

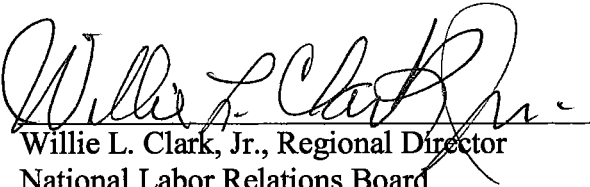
According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **September 24, 2010**. The request may be filed electronically through E-Gov on the Board's web site,

www.nlr.gov,⁷ but may not be filed by facsimile.

Dated: September 10, 2010.



Willie L. Clark, Jr., Regional Director
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⁷ To file the request for review electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Board/Office of the Executive Secretary** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, www.nlr.gov.